

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BOBBY J. LAY

Claimant

VS.

AEROTEK, INC.

Respondent

AND

**PLANET INSURANCE COMPANY
In care of RELIANCE NATIONAL
INSURANCE COMPANY**

Insurance Carrier

Docket No. 198,981

ORDER

Respondent appeals a Preliminary Hearing Order entered by Administrative Law Judge James R. Ward, dated July 13, 1995.

ISSUES

Respondent requests Appeals Board review of the following issues:

- (1) Whether claimant sustained a personal injury by accident that arose out of and in the course of his employment with respondent on June 17, 1993;
- (2) Whether respondent and its insurance carrier should be responsible for payment of medical expenses and temporary total disability benefits under Kansas law; and
- (3) Whether the Administrative Law Judge exceeded his jurisdiction in ordering respondent to provide medical treatment for claimant's injuries with Glenn M. Amundson, M.D.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The first issue raised by the respondent is one that is a jurisdictional issue that grants Appeals Board authority to review a preliminary hearing order. See K.S.A. 44-534a(a)(2).

(1) The Administrative Law Judge, in his Order dated July 13, 1995, ordered the respondent to pay temporary total disability benefits and to provide medical treatment for the claimant with Glenn M. Amundson, M.D. Claimant alleges that he was injured while working for respondent on June 17, 1993. However, the respondent argues that claimant's injuries and need for medical treatment are a result of an intervening accident which occurred while the claimant was employed by the respondent on June 23, 1993.

The Appeals Board has carefully reviewed the preliminary hearing testimony of the claimant and the medical records admitted therein. The medical records cover a period of medical treatment for the claimant from June 28, 1993 to April 20, 1995. During that period, claimant was either examined or treated by orthopedic surgeons, Drs. Thurston, Pazell, Amundson, Frank and neurosurgeons, Drs. Arjunan and Hess. Claimant testified he was injured while moving office furniture for the respondent on June 17, 1993. Claimant claims injuries to his right elbow, right shoulder and neck. The record is somewhat confusing as to the exact date of claimant's accidental injury. However, the Appeals Board finds that the record does establish that claimant's accidental injury either occurred on June 16, 17 or 18 of 1993. Respondent asserts that claimant's injuries were not caused by the June 17, 1993 accident but were the result of an intervening accident which occurred on June 23, 1993.

The Appeals Board disagrees and finds that the evidence established that the claimant did not meet with an intervening accident on June 23, 1993. Dr. Thurston's medical notes of June 28, 1993 indicate that claimant was injured one and one-half (1½) weeks before on June 23, 1993. This date was corrected in a subsequent note of July 9, 1993 which showed claimant's actual injury date of June 18, 1993. Dr. K.N. Arjunan, M.D., first examined the claimant on August 16, 1993. Dr. Arjunan's medical record related a history given by the claimant which stated that claimant strained his right arm on June 17, 1993 moving furniture and by June 23, 1993 he had increased pain while working. Claimant also testified that he was injured on June 17, 1993, tried to continue working but was unable because of his injury. The medical records establish that claimant's pre-existing right elbow and cervical spine conditions were aggravated by his work-related accident of June 17, 1993. Due to the elbow aggravation, Dr. Pazell performed a right ulnar nerve transposition. In regard to the claimant's cervical spine, Dr. Amundson is recommending a cervical discography and if positive an anterior discectomy with fusion.

(2) The next issue that respondent requested Appeals Board review is whether respondent should be responsible for payment of the ordered preliminary hearing benefits under the Kansas Workers Compensation Law. Respondent does not brief this issue, so the Appeals Board assumes that the respondent is arguing that the parties are not covered by the Kansas Workers Compensation Act. After reviewing the record, the Appeals Board finds that claimant was hired and also was working out of respondent's office, located in Overland Park, Kansas, on the date of claimant's accidental injury. Accordingly, the Kansas Act applies to the parties. See K.S.A. 44-506.

(3) The third and final issue questioned by the respondent is whether the Administrative Law Judge exceeded his jurisdiction when he ordered the respondent to provide medical treatment for the claimant with Dr. Glenn Amundson. This issue is not one of the issues listed in K.S.A. 44-534a(a)(2) that allows Appeals Board review. The Appeals Board also finds that the Administrative Law Judge did not exceed his jurisdiction in the instant case, as he is granted specific authority to grant or deny requests for medical benefits in a preliminary hearing order pending a full hearing on the claim. See K.S.A. 4-534a(a)(2).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward, dated July 13, 1995, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of October, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Bobby J. Lay, Pro Se
Timothy G. Lutz, Overland Park, Kansas
James R. Ward, Administrative Law Judge
Philip S. Harness, Director